

## **SUBCHAPTER K : FINANCIAL ASSURANCE**

### **§330.280. Applicability.**

The requirements of this section apply to owners and operators of any municipal solid waste facility permitted under this chapter, except for owners and operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States. The requirements of this section become effective April 9, 1994.

### **§330.281. Financial Assurance for Closure of Landfills.**

(a) A detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the largest area of the landfill ever requiring a final closure at any time during the active life of the unit in accordance with the final closure plan shall be provided. For any landfill this means the completion of the final closure requirements. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate shall equal the cost of closing the largest area of all landfill units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(2) During the active life of the unit, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the final closure plan or the landfill conditions increase the maximum cost of closure at any time during the remaining active life of the unit.

(4) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the unit and the owner or operator has provided written notice to the executive director of the situation that includes a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a permit modification and shall be handled as

such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted within 60 days prior to the anniversary date for the annual review and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste unit shall establish financial assurance for closure of the unit in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for closure shall be provided until the site is officially placed under the post-closure maintenance period and all requirements of the final closure plan have been approved as evidenced in writing by the executive director.

**§330.282. Financial Assurance for Closure of Process Facilities.**

(a) A detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the process facility by cleaning up the litter and debris from the site and the equipment, hauling the litter and debris to an approved landfill, and to render the facility closed by dismantling vital operational parts and locking up the facility shall be provided. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste process facilities that remain in operation after October 9, 1993.

(1) The cost estimate shall equal the cost of closing the facility at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(2) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the closure plan or the facility conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(4) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the

financial assurance shall be considered a permit modification and shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date for the annual review required under paragraph (2) of this subsection and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste process facility shall establish financial assurance for closure of the facility in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for closure shall be provided until all requirements of the final closure plan have been completed and the site is determined to be officially closed in writing by the executive director.

**§330.283. Financial Assurance for Post-Closure Care of Landfills.**

(a) A detailed written cost estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care activities for the municipal solid waste unit, in accordance with the post-closure care plan, shall be provided. The post-closure care cost estimate used to demonstrate financial assurance in subsection (b) of this section shall account for the total costs of conducting post-closure care including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(2) During the active life of the unit, the owner or operator shall annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of post-closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(3) An increase in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes in the post-closure care plan or the unit conditions increase the maximum costs of post-closure care.

(4) A reduction in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section may be allowed if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the post-closure cost estimate and the amount of financial assurance. A reduction in the

cost estimate and the financial assurance shall be considered a permit modification and shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date for the annual review required under paragraph (2) of this subsection and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste landfill unit shall establish financial assurance for the costs of post-closure care of the unit in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for post-closure care shall be provided until the site is officially released in writing by the executive director from the post-closure care period in accordance with all requirements of the post-closure care plan.

**§330.284. Financial Assurance for Corrective Action.**

(a) A municipal solid waste landfill unit required to undertake a corrective action program under §330.238 of this title (relating to Implementation of the Corrective Action Program) shall prepare a detailed written cost estimate, in current dollars, of the cost of hiring a third party to perform the corrective action program. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The cost estimate for financial assurance shall be submitted with the corrective action plan. The financial assurance instrument shall be submitted no later than 120 days after the corrective action remedy has been selected. Financial assurance shall be required for each separate corrective action program established for a municipal solid waste unit.

(1) During a corrective action program, the owner or operator shall annually adjust the cost estimate for the corrective action plan for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of corrective action in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the corrective action cost estimate by the inflation factor. The result is the adjusted corrective action cost estimate. Subsequent adjustments are made by multiplying the latest adjusted corrective action cost estimate by the latest inflation factor.

(2) The corrective action cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be increased if changes in the corrective action program or unit conditions increase the maximum costs of corrective action.

(3) A reduction in the cost estimate and the amount of financial assurance for corrective action provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum remaining costs of corrective action at any time during the remaining corrective action period and the owner or operator has provided written notice to the executive director that includes a detailed justification for the reduction of the corrective action cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a

modification to the corrective action plan. After this agency's approval of the modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date for the annual review required under paragraph (1) of this subsection and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste landfill unit required to undertake a corrective action program established under §330.238 of this title (relating to Implementation of the Corrective Action Program) shall establish financial assurance for the costs of the most recent corrective action program in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for each corrective action program shall be provided until the site is officially released in writing by the executive director from all requirements of the corrective action program after completion of all work specified in the corrective action plan.

**§330.285. Financial Assurance Mechanisms.**

(a) The mechanisms used to demonstrate financial assurance under this subchapter shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases shall be available whenever they are needed. Owners and operators shall choose a mechanism from the options specified in subsections (b)-(g) of this section.

(b) Trust Fund.

(1) An owner or operator may demonstrate financial assurance for closure or post-closure care by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally-signed duplicate of the trust agreement to the executive director at least 60 days before the date on which waste is first received or before the effective date of this section, April 9, 1994, whichever is later. An owner or operator may demonstrate financial assurance for corrective action by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the executive director no later than 120 days after the corrective action remedy has been selected. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. The wording of the trust agreement shall be identical to the wording specified in §330.286(a) of this title (relating to Wording of the Instruments), and the trust agreement shall be accompanied by a formal certification of acknowledgement (for example, see §330.286(b) of this title (relating to Wording of the Instruments)). Schedule A of the trust agreement shall be updated within 60 days after any change in the amount of the current cost estimate covered by the agreement.

(2) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the unit or facility, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for

closure or post-closure care, except as provided in subsection (h) of this section, divided by the number of years in the pay-in period as defined in subsection (b)(2) of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in subsection (h) of this section, divided by the number of years in the corrective action pay-in period as defined in subsection (b)(2) of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB}-\text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that shall be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund shall be made 60 days before the initial receipt of waste or before the effective date of this section, April 9, 1994, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. Subsequent payments shall be made no later than 30 days after each annual anniversary date of the first payment.

(6) If a trust fund is established after having used one or more of the alternate mechanisms specified in this section, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this subsection, as applicable.

(7) The owner, operator, or other person authorized to conduct closure, post-closure care, and/or corrective action activities may request reimbursement by submitting itemized bills to the executive director. The owner or operator may submit a written request to the executive director for reimbursements from the trust fund for partial closure, post-closure, and/or corrective action, only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the unit or facility over its remaining operating life. The request shall include an explanation of the expenses and all applicable itemized bills. The executive director shall instruct the trustee to make reimbursements

in those amounts as the executive director specifies in writing, if the executive director determines that the expenditures are in accordance with the approved plan, or otherwise justified.

(8) The trust fund may be terminated by the owner or operator only if an alternate financial assurance mechanism has been substituted as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(c) Surety Bond Guaranteeing Payment or Performance.

(1) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond that conforms to the requirements of this subsection and submitting the bond to the executive director at least 60 days before the date on which waste is first received or before the effective date of this section, April 9, 1994, whichever is later. An owner or operator may demonstrate financial assurance for corrective action by obtaining a payment or performance surety bond that conforms to the requirements of this paragraph and submitting the bond to the executive director no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. The wording of a payment bond shall be identical to the wording specified in §330.286(c) of this title (relating to Wording of the Instruments). The wording of a performance bond shall be identical to the wording specified in §330.286(d) of this title (relating to Wording of the Instruments). The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of the Treasury.

(2) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care, and/or corrective action cost estimate, whichever is applicable, except as provided in §330.285(h) of this title (relating to Financial Assurance Mechanisms).

(3) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(4) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of §330.285(b) of this title (relating to Financial Assurance Mechanisms) except the requirements for initial payment and subsequent annual payments specified in §330.285(b)(2), (5), (10), and (15) of this title (relating to Financial Assurance Mechanisms).

(5) Payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee and the executive director.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the executive director 120 days in

advance of cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this section.

(7) A payment bond shall guarantee that the owner or operator shall:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the unit or facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the executive director becomes final, or within 15 days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(8) Under the terms of the payment bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(9) The performance bond shall guarantee that the owner or operator shall:

(A) perform final closure in accordance with the closure plan and other requirements of the permit for the unit or facility whenever required to do so; or

(B) provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(10) Under the terms of the performance bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(11) The owner or operator may cancel the payment or performance bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(d) Letter of Credit.



(1) An owner or operator may demonstrate financial assurance for closure, post-closure, and/or corrective action activities by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting the letter to the executive director. An owner or operator of a new unit or facility shall submit the letter of credit to the executive director at least 60 days before the date on which waste is first received. The letter of credit shall be effective at least 60 days before the initial receipt of waste or before the effective date of this section, April 9, 1994, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency. The wording of the letter of credit shall be identical to the wording specified in §330.286(e) of this title (relating to Wording of the Instruments).

(2) The owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the executive director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund shall meet the requirements of the trust fund specified in §330.285(b) of this title (relating to Financial Assurance Mechanisms) except the requirements for initial payment and subsequent annual payments specified in §330.285(b)(2), (5), (10), and (15) of this title.

(3) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name, and address of the unit or facility, permit number, and the amount of funds assured, shall be included with the letter of credit.

(4) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action, whichever is applicable. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the executive director 120 days in advance of cancellation. If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director shall draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the executive director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the executive director.

(5) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is released from the requirements of this section in accordance with §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for

Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(e) Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, post-closure and/or corrective action by obtaining insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the executive director. An owner or operator of a new unit or facility shall submit the certificate of insurance to the executive director at least 60 days before the date on which waste is first received. The certificate of insurance shall be effective at least 60 days before the initial receipt of waste or before the effective date of this section, April 9, 1994, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas. The wording of the certificate of insurance shall be identical to the wording specified in §330.286(f) of this title (relating to Wording of the Instruments).

(2) The closure, post-closure, and/or corrective action insurance policy shall guarantee that funds shall be available to close the unit or facility whenever final closure occurs or to provide post-closure care for the unit or facility whenever the post-closure care period begins or to provide funds for corrective action activities, whichever is applicable. The policy shall also guarantee that once closure, post-closure care, and/or corrective action begins, the insurer shall be responsible for the paying out of funds up to an amount equal to the face amount of the policy, excluding legal fees, upon direction of the executive director, to such party or parties as the executive director specifies.

(3) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy, excluding legal defense costs. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) After beginning partial or final closure an owner or operator, or any other person authorized to conduct closure, post-closure care, and/or corrective action, may request reimbursements for expenditures by submitting itemized bills to the executive director. Requests for reimbursement may be granted if the remaining value of the policy is sufficient to cover the remaining costs of closure, post-closure care, and/or corrective action, and if justification and documentation of the cost is approved by the executive director.

(5) The owner or operator shall maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a

notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(6) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused and upon approval by the executive director.

(7) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the executive director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration: (A) the executive director deems the unit or facility abandoned; or

(B) the permit is terminated or revoked or a new permit is denied; or

(C) closure is ordered by the executive director or a United States District court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(E) the premium due is paid. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this section.

(8) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the United States Treasury for 26-week Treasury securities.

(9) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(f) Financial test and corporate guarantee.

(1) An owner or operator may demonstrate financial assurance for closure, post-closure, and/or corrective action by satisfying the requirements of this section. The owner or operator must demonstrate that he passes a financial test as specified in this subparagraph. To pass this test the owner or operator must meet the criteria of either subparagraphs (A) or (B) of this section:

(A) The owner or operator must have:

(i) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(ii) net working capital and tangible net worth each at least six times the sum of the current closure, post-closure and corrective action cost estimates;

(iii) tangible net worth of at least \$10 million; and

(iv) assets located in the United States amounting to at least 90% of total assets or at least six times the sum of the current closure, post-closure, corrective action cost estimates.

(B) The owner or operator must have:

(i) a current rating for his most recent bond issuance of Aaa, Aa, A, or Baa as issued by Moody's or AAA, AA, A, or BBB as issued by Standard and Poor's; and

(ii) tangible net worth at least six times the sum of the current closure and post-closure, and corrective action cost estimates; and

(iii) tangible net worth of at least \$10 million; and

(iv) assets located in the United States amounting to at least 90% of total assets or at least six times the sum of the current closure, post-closure, and corrective action cost estimates.

(2) The phrase "current closure, post-closure, and corrective action cost estimates" as used in paragraph (1) of this subsection refers to the cost estimates required to be shown in paragraphs (1)-(3) of the letter from the owner's or operator's chief financial officer (§330.286(g) of this title).

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in §330.286(g); and

(B) a copy of the owner's or operator's independently audited year-end financial statements for the latest fiscal year including the "unqualified opinion" of the auditor; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(i) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(ii) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) In the case of closure and post-closure care, these items must be submitted to the executive director 60 days prior to the initial receipt of waste or on April 9, 1994, the effective date of the financial responsibility requirements, whichever is later. In the case of corrective action these items must be submitted to the executive director no later than 120 days following selection of a corrective action remedy.

(5) After the initial submission of items specified in paragraph (3) of this subsection, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (3) of this subsection.

(6) If the owner or operator no longer meets the requirements of paragraph (1) of this subsection, he must send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (1) of this subsection, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (3) of this subsection. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (1) of this subsection, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (3)(B) of this subsection). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (3) of this subsection when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) an owner or operator is released from the requirements of this section in accordance with §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), 330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), 330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or 330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (1) -(8) of this subsection and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §330.286(h). The corporate guarantee must accompany the items sent to the executive director as specified in paragraph (3) of this subsection. The terms of the corporate guarantee must provide the following.

(A) If the owner or operator fails to perform closure, post-closure, and/or corrective action of a unit or facility covered by the corporate guarantee in accordance with the applicable plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in §330.285(b) in the name of the owner or operator.

(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(C) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(11) The proposed corporate financial test may be substituted with the final EPA test.

(12) A local government as it pertains to this section is defined as follows: A city, town county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over solid waste management. This definition includes a special district created under State law.

(g) Local government financial test and government guarantee.

(1) A local government may demonstrate financial assurance for closure, post-closure, and/or corrective action by satisfying the requirements of this section. The local government must demonstrate that it passes the local government financial test as specified in this subparagraph. In order to continue using the local government financial test, the test must be passed on an annual basis. (Unless otherwise defined in this subchapter, financial terms used in this subsection are to be interpreted consistently with generally accepted accounting principles for local governments.) This test consists of a financial component, a public notice component, and a record-keeping and reporting component. A local government must satisfy each of the three components to pass the test. The criteria for each component is discussed below.

(A) Financial component. In order to satisfy the financial component of the test, a local government must meet the criteria of either clause (i) or (ii) of this subparagraph and in addition must meet certain general conditions outlined in clause (iii) of this subparagraph.

(i) The local government must have:

(I) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(II) a ratio of annual debt service to total expenditures less than or equal to 0.20; and

(III) a ratio of long-term debt issued and outstanding to capital expenditures less than or equal to 2.00; and

(IV) a ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43.

(ii) The local government must have:

(I) a current bond rating of Aaa, Aa, A, or Baa, issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on its outstanding general obligation bonds; and

(II) a ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43.

(iii) In addition to meeting one of the criteria previously listed, the following general conditions must be met:

(I) the local government's financial statements shall be prepared in accordance with Generally Accepted Accounting Principals for local governments; and

(II) a local government must not have operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; and

(III) it must not currently be in default on any outstanding general obligation bonds; and

(IV) it must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(B) Public notice component. In order to satisfy the Public Notice Component of the test, a local government must in each year that the test or guarantee is used, identify the financial assurance costs in either its budget or its comprehensive annual financial report. The specific unit or facility covered, the categories of expenditures (e.g., closure, post-closure care, corrective action), the corresponding cost estimate, and the anticipated year of the required activity must be recorded. If the financial assurance obligation is to be included in the budget, it should either be listed as an approved budgeted line item (if the obligation will arise during the budget period) or in an appropriate supplementary data section (if the obligation will not arise during the budget period). If the information is to be included in the comprehensive annual financial report, it is to be included in the financial section as a footnote to the annual financial statements.

(C) Record-keeping and Reporting Component. To demonstrate that the local government meets the requirements of this test, the following three items must be submitted to the executive director in accordance with the deadlines of subparagraph (D) of this paragraph:

(i) a letter signed by the local government's chief financial officer (CFO) and worded as specified in §330.286(i) that:

(I) lists all the current cost estimates covered by a financial test;

(II) provides evidence and certifies that the local government meets the conditions of either subparagraphs (A)(i) or (ii) of this paragraph; and

(III) certifies that the local government meets the conditions of subparagraph (A)(iii) of this paragraph;

(ii) a copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the "unqualified opinion" of the auditor. The auditor must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;



(iii) a special report from the independent certified public accountant or state agency to the local government stating that:

(I) the certified public accountant or state agency has compared the data in the chief financial officer's letter with the local government's independently audited, year-end financial statements for the latest fiscal year; and

(II) in connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.

(D) In the case of closure and post-closure care, these items must be submitted to the executive director 60 days prior to the initial receipt of waste or on April 9, 1994, the effective date of the financial responsibility requirements, whichever is later. In the case of corrective action these items must be submitted to the executive director no later than 120 days following selection of a corrective action remedy.

(E) Annual updates of the financial test documentation must be submitted to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all the items as specified previously.

(F) If the local government no longer meets the requirements of subparagraphs (A), (B), and (C) of this section, the local government must send notice to the executive director of intent to establish alternate financial assurance. This notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data show that the local government no longer meets the requirements. The local government must provide alternate financial assurance within 120 days after the end of such fiscal year.

(G) The local government is no longer required to comply with the requirements of this section if alternate financial assurance is substituted as specified in this section or if the local government is no longer required to demonstrate financial responsibility in accordance with the requirements of §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(2) A local government may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "local government guarantee". The local government guarantor must meet all of the requirements outlined for the local government financial test in subparagraphs (1)(A), (1)(B), and (1)(C) of this subsection and must comply with the terms of the local government guarantee. The wording of the guarantee must be identical to the wording specified in §330.286(j). The guarantee must accompany the items sent to the executive director as specified in paragraph (1)(C) of this subsection and must be updated annually in accordance with the requirements of the local government financial test. The terms of the guarantee must provide the following.

(A) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a municipal solid waste unit or facility covered by the guarantee in accordance with the applicable plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in §330.285(b) in the name of the owner or operator.

(B) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(C) If the local government guarantor no longer meets the requirements of the financial test, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative financial assurance.

(D) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator and submit evidence of the alternate assurance to the executive director.

(3) The proposed local government financial test may be substituted with the final EPA test.

(h) Use of Multiple Mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per unit or facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

(i) State Assumption of Responsibility. If the executive director either assumes legal responsibility for an owner's or operator's compliance with the closure, post-closure care, and/or corrective action requirements of this chapter, or assures that the funds shall be available from State sources to cover the requirements, the owner or operator shall be in compliance with the requirements of this section. Any State assumption of responsibility shall meet the criteria specified in §330.285(j) of this title (relating to Financial Assurance Mechanisms).

(j) The language of the mechanisms listed in subsections (b), (c), (d), (e), (f), and (g) of this section shall ensure that the instruments satisfy the following criteria:

(1) the financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) the financial assurance mechanisms shall ensure that funds shall be available in a timely fashion when needed;

(3) the financial assurance mechanisms shall be obtained by the owner or operator at least 60 days prior to the initial receipt of solid waste or before the effective date of this section, April 9, 1994, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan, until the owner or operator is released from the financial assurance requirements under §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action);

(4) the financial assurance mechanisms shall be legally valid, binding, and enforceable under State and Federal law.

**§330.286. Wording of the Instruments.**

(a) A trust agreement for a trust fund, as specified in §330.285(b) of this title (relating to Financial Assurance Mechanisms), shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**TRUST AGREEMENT**

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State][insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the Texas Water Commission, "TWC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a landfill or process facility shall provide assurance that funds shall be available when needed for closure, post-closure, and/or corrective action,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the unit(s) or facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,  
Now, therefore, the Grantor and the Trustee agree as follows:

**Section 1. Definitions. As used in this Agreement:**

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.
- (c) Unit or facility means any "landfill or process facility" or any other facility or activity that is subject to regulation under the Municipal Solid Waste Program.

Section 2. Identification of Units or Facilities and Cost Estimates. This Agreement pertains to the units or facilities and cost estimates identified on attached Schedule A [on Schedule A, for each unit or facility list the permit or registration identification number, name, address, and the closure, post-closure, and/or corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TWC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TWC.

Section 4. Payment for Closure, Post-Closure and/or Corrective Action. The Trustee shall make payments from the Fund as the executive director shall direct, in writing, to provide for the payment of the costs of closure, post-closure and/or corrective action of the landfills or process facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the executive director from the Fund for expenditures in such amounts as the executive director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the executive director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the units or facilities, or any of their affiliates as defined in the Investment Company Act of

- 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
  - (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S. C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund.

All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate executive director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the executive director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the executive director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designers as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TWC hereunder has occurred. The Trustee shall have no duty to act in

the absence of such orders, requests, and instructions from the Grantor and/or TWC, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify in writing the Grantor and the appropriate executive director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate executive director, or by the Trustee and the appropriate executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the executive director, or by the Trustee and the executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 31 Texas Administrative Code §330.286(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]

By [Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

By

Attest:

[Title]

[Seal]

(b) The following is an example of the certification of acknowledgment that shall accompany the trust agreement for a trust fund as specified in §330.285(b) of this title (relating to Financial Assurance Mechanisms). State requirements may differ on the proper content of this acknowledgment.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order. [signature of Notary Public]

(c) A surety bond guaranteeing payment into a trust fund, as specified in §330.285(c) of this title (relating to Financial Assurance Mechanisms) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### FINANCIAL GUARANTEE BOND

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]. Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"].

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)].



Permit number, name, address, and closure, post-closure, and/or corrective action amount(s) for each unit or facility guaranteed by this bond [indicate closure, post-closure and/or corrective action amounts separately]: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission (hereinafter called TWC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Municipal Solid Waste Regulations, to have a permit or comply with requirements to operate under rule in order to own or operate each landfill or process facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, post-closure, and/or corrective action as a condition of the permit or provisions to operate under rule, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the condition of the obligation are such that if the Principal shall faithfully, before the beginning of closure, post-closure, and/or corrective action of each landfill or process facility identified above, fund the standby trust fund in the amount(s) identified above for the landfill or process facility,

Or if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin closure, post-closure, and/or corrective action is issued by an executive director or a United States district court or other court of competent jurisdiction,

Or if the Principal shall provide alternate financial assurance, as specified in Subchapter K of 31 Texas Administrative Code Chapter §330.285, as applicable, and obtain the executive director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an executive director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the landfill and process facility into the standby trust funds as directed by the executive director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the executive director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the executive director, as evidenced by the return receipts. The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the executive director in which the bonded unit(s) or facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure, and/or corrective action amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written permission of the executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The person whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 31 Texas Administrative Code §330.286(c) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: \_\_\_\_\_.

Liability limit: \$\_\_\_\_\_.

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$\_\_\_\_\_.

(d) A surety bond guaranteeing performance, as specified in 31 Texas Administrative Code §330.285(c) of this title (relating to Financial Assurance Mechanisms), shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### PERFORMANCE BOND

Date bond executed: \_\_\_\_\_.

Effective date: \_\_\_\_\_.

Principal: [legal name and business address of owner or operator]. Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"].

State of incorporation: \_\_\_\_\_.

Surety(ies): [name(s) and business address(es)]

\_\_\_\_\_  
\_\_\_\_\_

Permit number, name, address, and closure, post-closure, and/or corrective action amounts(s) for each landfill and process facility guaranteed by this bond [indicate closure, post-closure, and/or corrective action amounts for each landfill and process facility]:

\_\_\_\_\_  
\_\_\_\_\_

Total penal sum of bond: \$\_\_\_\_\_.

Surety's bond number: \_\_\_\_\_.

Know All Persons By These Presents.

That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission [hereinafter called TWC], in the above penal sum for the payment of which we bind ourselves, our heirs, executors,

administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Municipal Solid Waste Regulations, as amended, to have a permit or comply with provisions to operate under rule for each landfill and process facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, post-closure, and/or corrective action as a condition of the permit or approval to operate under rule, and

Whereas said Principal shall establish a standby trust fund as required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, post-closure, and/or corrective action, whenever required to do so, of each landfill and process facility for which this bond guarantees closure, post-closure, and/or corrective action, in accordance with the closure, post-closure, and/or corrective action plan and other requirements of the permit or provisions for operating under rule and other requirements of the permit or provisions for operating under rule as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended, Or if the Principal shall provide alternate financial assurance as specified in Subchapter K of 31 Texas Administrative Code Chapter §330.285, and obtain the executive director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an executive director that the Principal has been found in violation of the closure, post-closure, and corrective action requirements of Subchapter K of 31 Texas Administrative Code Chapter §330.285, for a landfill and process facility which this bond guarantees performances of closure, post-closure, and/or corrective action, the Surety(ies) shall either perform closure, post-closure, and/or corrective action in accordance with the closure, post-closure, and/or corrective action plan and other permit requirements or provisions for operating under rule and other requirements or place the amount for closure, post-closure, and/or corrective action into a standby trust fund as directed by the executive director.

Upon notification by an executive director that the Principal has failed to provide alternate financial assurance as specified in Subchapter K of 31 Texas Administrative Code Chapter §330.285, and obtain written approval of such assurance from the executive director during the 90 days following receipt by both the Principal and the executive director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the municipal solid waste unit(s) or facility(ies) into the standby trust fund as directed by the executive director.

The Surety(ies) hereby waive(s) notification of amendments to closure, post-closure, and/or corrective action plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner and operator and to the executive director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the executive director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure, and/or corrective action amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written permission of the executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above. The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 31 Texas Administrative Code §330.286(d) as such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[Corporate Surety(ies)]

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_.

[Signature(s)]

[name(s) and title(s)]

Corporate seal:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_.

(e) A letter of credit, as specified in §330.285(d) of this title (relating to Financial Assurance Mechanisms), shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director  
Texas Water Commission  
Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner's or operator's name and address, identification or permit number and the amount for closure, post-closure, and/or corrective action] up to the aggregate amount of [in words] U.S. dollars \$\_\_\_\_\_, available upon presentation of

- (1) Your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Resource Conservation and Recovery Act of 1976 as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify in writing both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly

into the standby trust fund of [owner's or operator's name] in accordance with your instructions. We certify that the wording of this letter of credit is identical to the wording specified in 31 Texas Administrative Code §330.286(e) as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date]  
This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(f) A certificate of insurance, as specified in 31 Texas Administrative Code §330.285(e) of this chapter, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE, POST-CLOSURE,  
AND/OR CORRECTIVE ACTION

Name and Address of Insurer (herein called the "insurer"):

\_\_\_\_\_

Name and Address of Insured (herein called the "insured"):

\_\_\_\_\_

Landfills and process facilities covered: [list for each: The identification and/or permit number, name, address, and the amount of insurance for closure, post-closure, and/or corrective action (these amounts for all landfills and process facilities covered shall total the face amount shown below).]

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [closure or post-closure, and/or corrective action] for the landfills and process facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 31 Texas Administrative Code §330.285(f), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency. Whenever requested by the executive director of the Texas Water Commission ("TWC"), the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon. I hereby certify that the wording of this certificate is identical to the wording specified in 31 Texas Administrative Code §330.286(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

[Signature of witness or notary:]

---

[Date]

(g) A letter from the chief financial officer, as specified in §330.285(f) of this title (relating to Financial Assurance Mechanisms) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

Executive Director  
Texas Water Commission  
Dear Sir:

I am the chief financial officer of [name and address of firm.] This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(g). [Fill out the following three paragraphs regarding municipal solid waste units or facilities and associated cost estimates. If your firm has no units or facilities that belong in a particular paragraph, write "None" in the space indicated. For each unit or facility, include its TWC permit number, name, address, and current closure, post-closure care, and/or corrective action cost estimates.]

1. This firm is the owner or operator of the following units or facilities for which financial assurance for closure, post-closure care, and/or corrective action is being demonstrated through the financial test specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(g). The current closure, post-closure, and/or corrective action cost estimates covered by the test are shown for each unit or facility: -----.
2. This firm guarantees, through the corporate guarantee specified in Subchapter K of 31 Texas Administrative Code Chapter 330.285(g), closure, post-closure care, and/or corrective action of the following units or facilities owned or operated by subsidiaries of this firm: -----.
3. In states where EPA is not administering the financial requirements, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure, post-closure care, and/or corrective action of the following units or facilities through the use of a test equivalent or substantially equivalent to the financial test. The current closure,



post-closure care, and/or corrective action cost estimates covered by such a test are shown for each unit or facility: -----.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on [month, day, year]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of §330.285(g)(1)(A)(i) of this title are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of §330.285 of this title are used.]

#### ALTERNATIVE 1

1. Sum of current closure, post-closure care, and/or corrective action cost estimates [total of all cost estimates shown in the three paragraphs above] \$.....
- \*2. Total liabilities [if any portion of the closure, post-closure care, and/or corrective action cost estimate is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$.....
- \*3. Tangible net worth \$.....
- \*4. Net worth \$.....
- \*5. Current assets \$.....
- \*6. Current liabilities \$.....
7. Net working capital [line 5 minus line6] \$.....
- \*8. The sum of net income plus depreciation, depletion and amortization \$.....
- \*9. Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.) \$.....
10. Assured environmental costs to demonstrate financial responsibilities in the following amounts under CFR and TWC regulations:  
  
MSWLF under 31 TAC Part 330 and 40 CFR Part 258 \$.....  
  
Hazardous waste treatment, storage, and disposal facilities under 31 TAC Part 335 and 40 CFR Parts 264 and 265 \$.....

Petroleum underground storage tanks under 31 TAC Part 334 and 40 CFR Part 280  
\$.....

Underground Injection Control System facilities under 31 TAC Part 331 and 40 CFR  
Part 144 \$.....

PCB commercial storage facilities under 40 CFR Part 761 \$.....

Total assured environmental costs \$.....

Circle either "yes" or "no" to the following questions.

11. Is line 3 at least \$10 million? yes/no
12. Is line 3 at least 6 times line 1? yes/no
13. Is line 7 at least 6 times line 1? yes/no
- \*14. Are at least 90% of firm's assets located in the U.S.? yes/no. If not, complete line 15
15. Is line 9 at least 6 times line 1? yes/no
16. Is line 2 divided by line 4 less than 2.0? yes/no
17. Is line 8 divided by line 2 greater than 0.1?            yes/no
18. Is line 5 divided by line 6 greater than 1.5?        yes/no

#### ALTERNATIVE II

1. Sum of current closure, post-closure care, and/or corrective action cost estimates [total of all cost estimates shown in the three paragraphs above] \$.....
2. Current bond rating of most recent issuance of this firm and name of rating service  
\$.....
3. Date of issuance of bond \$.....
4. Date of maturity of bond \$.....
- \*5. Tangible net worth [if any portion of the current cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$.....
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.)  
\$.....

7. Assured environmental costs to demonstrate financial responsibilities in the following amounts under CFR and TWC regulations:

MSWLF under 31 TAC Part 330 and 40 CFR Part 258  
\$.....

Hazardous waste treatment, storage, and disposal facilities under 31 TAC Part 335  
and 40 CFR Parts 264 and 265 \$.....

Petroleum underground storage tanks under 31 TAC  
Part 334 and 40 CFR Part 280 \$.....

Underground Injection Control System facilities under 31 TAC Part 331 and 40 CFR  
Part 144 \$.....

PCB commercial storage facilities under 40 CFR  
Part 761 \$.....

Total assured environmental costs \$.....

Circle either "yes" or "no" to the following questions.

8. Is line 5 at least \$10 million? yes/no
9. Is line 5 at least 6 times line 1? yes/no
- \*10. Are at least 90% of the firm's assets located in the U.S.? yes/no. If not,  
complete line 11.
11. Is line 6 at least 6 times line 1? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 31 Texas Administrative Code §330.286(g) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(h) A corporate guarantee as specified in 31 Texas Administrative Code §330.285(f) of this chapter shall be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CORPORATE GUARANTEE FOR CLOSURE, POST-CLOSURE CARE,  
AND/OR CORRECTIVE ACTION**

Guarantee made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by [name of guaranteeing entity], a business corporation organized under the laws of the State [insert name of State], herein referred to as guarantor, to the Texas Water Commission (TWC), obligee, on behalf of our subsidiary [owner or operator] of [business address]. Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 31 Texas Administrative Code §330.285(f).
2. [Owner or operator] owns or operates the following municipal solid waste unit(s) or facility(ies) covered by this guarantee: [List for each unit or facility: TWC permit number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, and/or corrective action.]
3. "Closure Plans", "Post-Closure Care Plans", and/or "Corrective Action Plans" as used below refers to the plans maintained as required by 31 Texas Administrative Code Chapter 330 for the closure and post-closure care of the units or facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to TWC that in the event that [owner or operator] fails to perform [insert "closure", "post-closure care", "corrective action", or "closure, post-closure care, and/or corrective action"] of the above unit(s) or facility(ies) in accordance with the applicable plan and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 31 Texas Administrative Code §330.285(b) in the name of [owner or operator] in the amount of the current cost estimates.
5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the executive director and to [owner or operator] that he intends to provide alternate financial assurance. Within 120 days after the end of such fiscal year, the guarantor will establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the executive director, by certified mail, of a voluntary or involuntary proceeding under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, and/or corrective action, he shall establish alternate financial assurance, in the name of [owner or operator] unless [owner or operator] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the applicable plan, the amendment or modification of the permit, the extension or reduction of the time of performance of closure, post-closure care, and/or corrective action, any other modification or alteration of an obligation of owner or operator pursuant to 31 Texas Administrative Code Chapter 330.
9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial assurance requirements of 31 Texas Administrative Code Chapter 330 for the above-listed units or facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the executive director and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TWC and [owner or operator] as evidenced by the return receipts.
10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance and obtain written approval of such assurance from the executive director within 90 days after a notice of cancellation by the guarantor is received by the executive director, guarantor shall provide such alternate financial assurance in the name of the [owner or operator].
11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Water Commission or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the unit or facility permit(s). I hereby certify that the wording of this guarantee is identical to the wording specified in 31 Texas Administrative Code §330.286(h).

Effective date:\_\_\_\_\_.

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or

Notary:\_\_\_\_\_

(i) A letter from the Chief Financial Officer, as specified in 330.285(g) of this title (relating to Financial Assurance Mechanisms), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

Executive Director  
Texas Water Commission  
Dear Sir:

I am the chief financial officer of [name and address of local government]. This letter is in support of this local government's use of the financial test to demonstrate financial assurance, as specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(g).

[Fill out the following three paragraphs regarding the municipal solid waste units or facilities and associated cost estimates. If there are no units or facilities that belong in a particular paragraph, write "None" in the space indicated. For each unit or facility, include its permit number, name, address and current closure, post-closure care, and/or corrective action cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, and/or corrective action.]

1. This local government is the owner or operator of the following units or facilities for which financial assurance for closure, post-closure care, and/or corrective action is demonstrated through the financial test specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(g). The current closure, post closure care, and/or corrective action cost estimates covered by the test are shown for each unit or facility: -----.
2. This local government guarantees, through the guarantee specified in 31 Texas Administrative Code Chapter 330.285(g), the closure, post-closure care, and/or corrective action care of the following units or facilities owned or operated by [insert owner's name or operator's name]. The current cost estimates for the closure, post-closure care, and/or corrective action so guaranteed are shown for each unit or facility: -----.

The fiscal year of this local government ends on [month, day, year]. The figures for the following items marked with an asterisk are derived from this local government's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in the Ratio Indicators of Financial Strength section if the criteria of paragraph (g)(1)(A)(i) of 330.285 of this chapter are used. Fill in Bond Rating Indicator of Financial Strength section if the criteria of paragraph (g)(1)(A)(ii) of 330.285 of this chapter are used.]

RATIO INDICATORS OF FINANCIAL STRENGTH

1. Sum of current closure, post-closure care, and/or corrective action cost estimates [total of all cost estimates shown in the paragraphs above] \$.....
- \*2. Sum of cash and marketable securities \$.....
- \*3. Total expenditures \$.....
- \*4. Annual debt service \$.....
- \*5. Long-term debt service \$.....
- \*6. Capital expenditure \$.....
7. Assured environmental costs to demonstrate financial responsibility in the following amounts under CFR and TWC regulations:  
  
MSLF under 31 TAC Part 330 and 40 CFR Part 258 \$.....  
  
Hazardous waste treatment, storage and disposal facilities under 31 TAC Part 335 and 40 CFR Parts 264 and 265 \$.....  
  
Petroleum underground storage tanks under 31 TAC Part 334 and 40 CFR Part 280 \$.....  
  
Underground Injection Control System facilities under 31 TAC Part 331 and 40 CFR Part 144 \$.....  
  
PCB commercial storage facilities under 40 CFR Part 761 \$.....  
  
Total assured environmental costs \$.....
- \*8. Total Annual Revenue \$.....

Circle either "yes" or "no" to the following questions.

9. Is line 2 divided by line 3 greater than or equal to 0.05? yes/no
10. Is line 4 divided by line 3 less than or equal to 0.20? yes/no

11. Is line 5 divided by line 6 less than or equal to 2.00? yes/no
12. Is line 7 divided by line 8 less than or equal to 0.43? yes/no

BOND RATING INDICATOR OF FINANCIAL STRENGTH

1. Sum of current closure, post-closure care, and/or corrective action cost estimates [total of all cost estimates shown in the paragraphs above] \$.....
2. Current bond rating of most recent issuance and name of rating service \$.....
3. Date of issuance bond .....
4. Date of maturity of bond .....
5. Assured environmental costs to demonstrate financial responsibility in the following amounts under CFR and TWC regulations:

MSWLF under 31 TAC Part 330 and 40 CFR Part 258 \$.....

Hazardous waste treatment, storage and disposal facilities under 31 TAC Part 335 and 40 CFR Parts 264 and 265 \$.....

Petroleum underground storage tanks under 31 TAC Part 334 and 40 CFR Part 280 \$.....

Underground Injection Control System facilities under 31 TAC Part 331 and 40 CFR Part 144 \$.....

PCB commercial storage facilities under 40 CFR Part 761 \$.....

Total assured environmental costs \$.....

- \*6. Total Annual Revenue \$.....

Circle either "yes" or "no" to the following question.

7. Is line 5 divided by line 6 less than or equal to 0.43? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 31 Texas Administrative Code 330.286(i) as such regulations were constituted on the date shown immediately



below. I further certify the following: that the local government's financial statements are prepared in conformity with GAAP for governments; that the local government has not operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; that the local government is not in default on any outstanding general obligations bonds; and that the local government does not have outstanding general obligations rated less than investment grade.

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_

(j) A local government guarantee as specified in §330.285(g) of this title (relating to Financial Assurance Mechanisms) shall be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**LOCAL GOVERNMENT GUARANTEE FOR CLOSURE, POST-CLOSURE CARE,  
AND/OR CORRECTIVE ACTION**

Guarantee made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by [name of guaranteeing entity], herein referred to as guarantor, to the Texas Water Commission (TWC), obligee, on behalf of the following [owner or operator] of [business address].

**Recitals**

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 31 Texas Administrative Code §330.285(g).
2. [Owner or operator] owns or operates the following municipal solid waste unit(s) or facility(ies) covered by this guarantee: [List for each unit or facility: TWC permit number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, and/or for corrective action.]
3. "Closure Plans", "Post-Closure Care Plans", and/or "Corrective Action Plans" as used below refers to the plans maintained as required by 31 Texas Administrative Code Chapter 330 for the closure, post-closure care, and/or corrective action of units or facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to TWC that in the event that [owner or operator] fails to perform [insert "closure", "post-closure care", and/or "corrective action"] of the above unit(s) or facility(ies) in accordance with the applicable plans and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 31 Texas Administrative

Code §330.285(b) in the name of [owner or operator] in the amount of the current closure, post-closure care, and/or corrective action cost estimates.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the executive director and to [owner or operator] that he intends to provide alternate financial assurance. Within 120 days after the end of such fiscal year, the guarantor will establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the executive director, by certified mail, of a voluntary or involuntary proceeding under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by the executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care or corrective action, he shall establish alternate financial assurance, in the name of [owner or operator] unless [owner or operator] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the applicable plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure, post-closure care, and/or corrective action, any other modification or alteration of an obligation of owner or operator pursuant to 31 Texas Administrative Code Chapter 330.
9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial assurance requirements of 31 Texas Administrative Code Chapter 330 for the above-listed units or facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the executive director and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TWC and [owner or operator] as evidenced by the return receipts.
10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance and obtain written approval of such assurance from the executive director within 90 days after a notice of cancellation by the guarantor is received by both the executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of the [owner or operator].
11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Water Commission or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the unit or facility permit(s). I hereby certify that the

wording of this guarantee is identical to the wording specified in 31 Texas  
Administrative Code §330.286(j).

Effective date:\_\_\_\_\_.

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or

Notary:\_\_\_\_\_